IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3246 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SITARAMBHAI TRIBHUVANDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3246 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/05/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention dated 31.1.2003 passed against the detenu by the District Magistrate, Patan, in exercise of the powers conferred on him by Section 3(2)(a) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act").

2. The petitioner has challenged the legality and validity of the order of detention passed against him on number of grounds. However, ld. counsel Mr. Prajapati appearing for the petitioner-detenu, has concentrated and restricted his arguments mainly on one ground keeping his right reserved to agitate other grounds if required, that the order of detention needs to be quashed and set aside and detenu should be set at liberty forthwith on the ground of delay in considering representation. While developing his arguments, ld. counsel Mr. Prajapati has stated that the representation made by the detenu has not been considered by the authority at the earliest. Mr. Prajapati has pointed out certain decisions of this Court as well as of Apex Court wherein the Courts have propounded the principle that the liberty of a person should be jealously protected and the detaining authority is supposed to consider the representation making grievance as to the validity of the order of detention, expeditiously and the decision so taken should be conveyed to the detenu forthwith. The delay in disposal of the representation and/or in conveying the decision taken by the authority to the detenu is fatal and such detention cannot sustain.

3. In the present case, the present detenu was detained on 3.2.2003 and was served with grounds of detention. Representation to the competent authority has been made on 6.3.2003 viz. to the Advisory Board, but the same has not been dealt with and decided expeditiously. The relevant ground in this regard is taken in the memo of the petition as ground 4(q) & (r). In the reply-affidavit filed by respondent No.1 State, the State has attempted to explain the delay caused. I would like to reproduce the relevant part of the said affidavit-in-reply :-

> ".....Thereafter, the said file was placed before Deputy Secretary who cleared the said file on 22.3.2003. Thereafter, the said file was placed before the Secretary on 22.3.2003 who cleared the said file on 22.3.2003. Thereafter the said file was placed before the Hon. Minister

> of Civil Supplies for appropriate orders on 22.3.2003. The Hon. Minister of Civil Supplies cleared the said file on 29.3.2003 and as the file was received back by the Special Branch on 29.3.2003 and the detenu was informed about the rejection of representation by a letter dated 31.3.2003 through Jail Authority. I say that 30.3.2003 was Government holiday. In view of above facts, it is very clear that there is no unreasonable or undue delay in consideration of representation."

It is apparent from the above that there is no explanation about the delay caused between 23.3.2003 and 29.3.2003. It is rightly argued by ld. counsel Mr. Prajapati that order of detention requires to be quashed solely on this ground.

4. Considering the accepted proposition of law in this regard and in view of the delay caused in considering representation which has not been explained properly, I am inclined to allow this petition holding that the detention of the present detenu for want of cogent and reasonable explanation for the delay caused, shall have to be turned down.

5. For the reasons aforesaid, this petition is hereby allowed. Impugned orders of detention dated 31.1.2003 passed by the District Magistrate, Patan against the detenu is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

9.5.2002 [C.K. BUCH, J]
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